

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

THOMAS E. EDWARDS,

Petitioner,

v.

**Case No. 2:11-cr-229
JUDGE GREGORY L. FROST
Magistrate Judge Terence P. Kemp**

UNITED STATES OF AMERICA,

Respondent.

ORDER

This matter is before the Court for consideration of the Magistrate Judge's October 28, 2015 Report and Recommendation. (ECF No. 133.) In that filing, the Magistrate Judge correctly explained that Petitioner's August 31, 2015 motion to re-sentence, which challenges his sentence, is a 28 U.S.C. § 2255 challenge. (ECF No. 125.) The February 2014 amendment of the sentencing judgment (ECF No. 88) did not render Petitioner's October 2013 § 2255 motion invalid (ECF No. 81), which means that any subsequent § 2255 motion is successive. This in turn means that Petitioner's pending motion to re-sentence is a successive petition over which this Court lacks jurisdiction. The motion must be transferred to the United States Court of Appeals for the Sixth Circuit for a determination of whether this Court can address the motion.

The Report and Recommendation advised Petitioner that a failure to file a timely objection would "result in a waiver of the right to have the district judge review the *Report and Recommendation de novo*, and also operates as a waiver of the right to appeal the decision of the District Court adopting the *Report and Recommendation*." (ECF No. 133, at Page ID # 625.) No objections have been filed, the time for filing objections has expired, and the Magistrate

Judge's reasoning is correct. The Court therefore **ADOPTS** the Report and Recommendation (ECF No. 133), **DIRECTS** the Clerk to open a new 28 U.S.C. § 2255 civil action for statistical purposes, and **DIRECTS** the Clerk to transfer the motion to re-sentence (ECF No. 125) to the United States Court of Appeals for the Sixth Circuit as a successive petition.

Additionally, the Court notes that Petitioner's October 19, 2015 filing is not a motion, despite being styled as one. (ECF No. 132.) The Clerk should correct the docket so that it indicates that the filing is a notice.

IT IS SO ORDERED.

/s/ Gregory L. Frost
GREGORY L. FROST
UNITED STATES DISTRICT JUDGE